IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WA.No. 2019 of 2007

(AGAINST THE JUDGEMENT IN OP.37549/2002 DATED 15.03.2007)

APPELLANT/PETITIONER.

K.A.NAUSHAD, S/O. K.M.ABDUL KHADER,
HANDLING & TRANSPORTING CONTRACTOR,
KIZHAKKETHIL HOUSE, KUMMANAM P.O., KOTTAYAM.

BY ADV. SRI.GEORGE JACOB (JOSE)

RESPONDENTS/RESPONDENTS:
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1. THE FOOD CORPORATION OF INDIA
HEAD OFFICE, 16-20, BARAKHANBU LANE, NEW DELHI - 110 001, REPRESENTED BY MANAGING DIRECTOR.

2. THE ZONAL MANAGER,
ZONAL OFFICE, FOOD CORPORATION OF INDIA,
CHENNAI - 6.

3. THE SENIOR REGIONAL MANAGER,
FOOD CORPORATION OF INIDA, KESAVADASAPURAM,
THIRUVANANTHAPURAM - 4.

4. THE DISTRICT MANAGER,
FOOD CORPORATION OF INDIA, DISTRICT OFFICE,
CHANNANIKADU P.O., KOTTAYAM - 686 533.

5. THE DISTRICT MANAGER,
FOOD CORPORATION OF INDIA DISTRICT OFFICE,
WEST HILL, CALICUT - 5.

BY ADV. SRI.JACOB VARGHESE SC FOR FCI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2019 OF 2007

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Dated this the 10th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is a contractor. The first respondent is an authority as envisaged under Article 12 of the Constitution of India.

2. In the Original Petition filed, the petitioner primarily called in question the demand raised by the respondents for the loss sustained by the Food Corporation of India for loss of goods in transit in excess of permissible limits. This demand was disputed by the petitioner. The said disputed demand was the subject matter of the Original Petition.

3. Since there was a dispute between the parties with regard to the loss sustained by the Food Corporation of India, in our opinion, it would have been appropriate for the learned Single Judge to have relegated the parties to the civil court for appropriate reliefs. Instead of doing so, the learned single Judge has disposed of the Original Petition on merits. Aggrieved by the said order, the petitioner is before us in this Writ Appeal.

4. A Writ is maintainable before this court if it is filed against an order of demand made by an authority as envisaged under Article 12 of the Constitution of India, provided that the demand so made is not in dispute. In the instant case, as we have noticed, the Food Corporation of India is demanding the so called loss sustained by them while transportation of the goods by the petitioner-contractor. Since there is a dispute, that dispute can

be resolved only in a civil suit that may be filed by the petitioner. Therefore, in our opinion, the learned single Judge ought not to have interfered with the demand raised by the respondents, but should have relegated the petitioner to file an appropriate civil suit for appropriate reliefs. In that view of the matter, the following:

O R D E R

I) The Writ Appeal is disposed of.

ii) The appellant/petitioner is now permitted to file a civil suit for appropriate reliefs, if for any reason, he is disputing the demand raised by the Food Corporation of India.

iii) If such a civil suit is filed, the civil court shall decide the lis between the parties without reference to the orders passed by the learned single Judge.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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